

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOSES BRAXTON,

Plaintiff,

Case No. 14-cv-12054

v

Honorable Thomas L. Ludington
Magistrate Judge Elizabeth A. Stafford

TOM HERITIER, et al.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PLAINTIFF'S COMPLAINT FOR FAILURE TO PROSECUTE**

Plaintiff Joses Braxton filed his *pro se*, 42 U.S.C. § 1983 complaint against Defendants Tom Heritier and Michael Murphy of the Saginaw County Police Department on May 22, 2014, alleging that Defendants had conspired to deprive him of his liberty by falsely arresting and maliciously prosecuting him. Compl., ECF No. 1. Plaintiff's claims stem from his operation of a towing company and the seizure of allegedly stolen vehicles which plaintiff had towed and which resulted in charges against plaintiff for larceny by conversion and receiving and concealing stolen property. The charges were later dismissed.

The matter was assigned to Magistrate Judge Elizabeth A. Stafford for general pretrial case management. *See* ECF No. 59. On February 5, 2016 Defendants filed a motion for summary judgment. *See* ECF No. 67. The magistrate judge then issued an order requiring Plaintiff to file his response by February 26, 2016, which was served on Plaintiff. *See* ECF No. 68. Plaintiff Braxton did not file a response. The magistrate judge therefore issued an order directing Plaintiff to show cause in writing by June 1, 2016 as to why his complaint should not be dismissed for failure to prosecute under Local Rule 41.2. *See* ECF No. 69. Plaintiff did not

file a response to the show cause order. Therefore, on June 13, 2016 the magistrate judge issued her report recommending that Plaintiff's complaint be dismissed with prejudice for failure to prosecute.¹ See ECF No. 70.

Although the magistrate judge's report explicitly states that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 70, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's complaint is **DISMISSED with prejudice** for failure to prosecute.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: July 12, 2016

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| <p style="text-align: center;">PROOF OF SERVICE</p> <p>The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 12, 2016.</p> <p style="text-align: right;"><u>s/Michael A. Sian</u> MICHAEL A. SIAN, Case Manager</p> |
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¹ While the title of the Report and Recommendation references dismissal without prejudice, both recommendations in the body of the report refer to dismissals with prejudice.